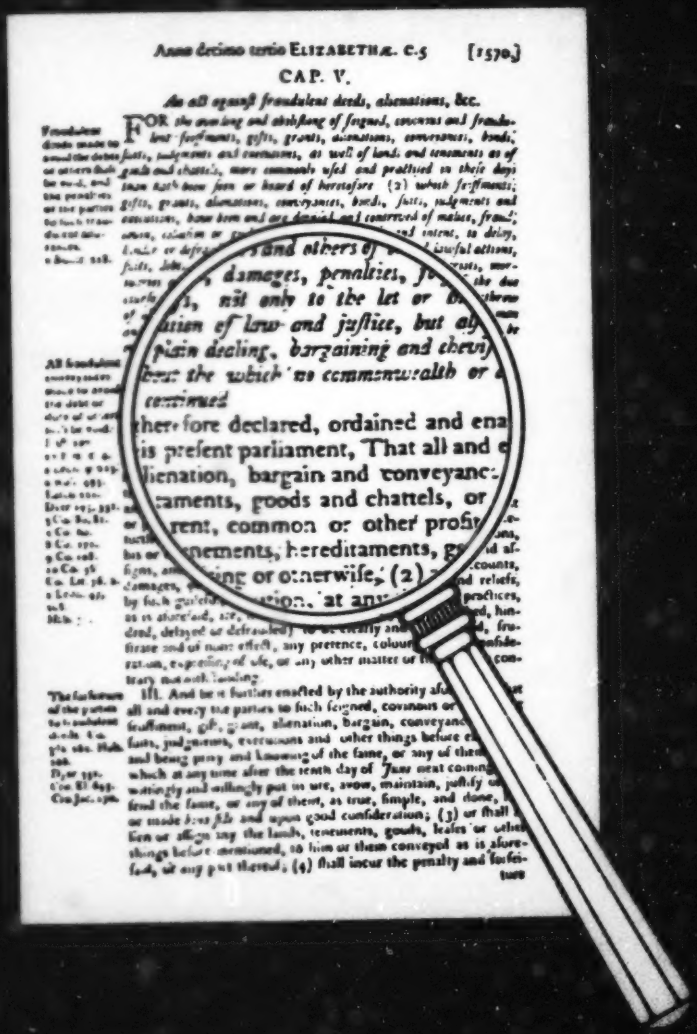
Law Reform Commission of Saskatchewan

Tentative Proposals for a Lieutenant Governor's Review Board in Saskatchewan

Saskatchewan


Anno decimo tertio ELIZABETHÆ. c. 5 [1570.]

CAP. V.

An act against fraudulent deeds, alienations, &c.

FOR the avoiding and delaying of fraud, covins and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments and executions, as well of lands and tenements as of goods and chattels, more commonly used and practised in these days, than hath been seen or heard of heretofore (2) which feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments and executions, have been and are devised and contrived of malice, fraud, covin, collusion or [illegible] and intent, to delay, hinder or defraud [illegible] and others of their lawful actions, suits, [illegible], damages, penalties, forfeitures, whereby not only the let or hindrance thereof hath grown to the great trouble and disquietness of the common course of justice and execution of law and justice, but also [illegible] plain dealing, bargaining and chevisance between the which the commonwealth or [illegible] continued

Wherefore declared, ordained and enacted by this present parliament, That all and every feoffment, gift, grant, alienation, bargain and conveyance [illegible] tenements, goods and chattels, or any of them, or any rent, common or other profit [illegible] hereditaments, goods and chattels, or any of them, by writing or otherwise, (2) [illegible] at any time or times, to the intent or purpose to delay, hinder or defraud creditors and others of their debts, accounts, damages, [illegible] and relefs, by such guileful, covinous or fraudulent devices and practices, as is aforesaid, [illegible], hindered, delayed or defrauded, to be clearly and utterly void, frustrate and of none effect, any pretence, colour, feigned consideration, expending of use, or any other matter or thing to the contrary notwithstanding.

III. And be it further enacted by the authority aforesaid, that all and every the parties to such feigned, covinous or fraudulent feoffment, gift, grant, alienation, bargain, conveyance, [illegible] suits, judgments, executions and other things before expressed, and being privy and knowing of the same, or any of them, which at any time after the tenth day of June next coming, wittingly and willingly put in ure, avow, maintain, justify or defend the same, or any of them, as true, simple, and done, or made bona fide and upon good consideration; (3) or shall alien or assign any the lands, tenements, goods, leases or other things before mentioned, to him or them conveyed as is aforesaid, or any part thereof, (4) shall incur the penalty and forfeiture

Acknowledgement

Funding for the background research upon which the proposals in this report are based was provided by the Law Foundation of Saskatchewan.

84- 3092 /

Tentative Proposals for a Lieutenant Governor's Review Board in Saskatchewan

Law Reform Commission of Saskatchewan
Saskatoon, Saskatchewan
January, 1984

The Law Reform Commission of Saskatchewan was established by An Act to Establish a Law Reform Commission proclaimed in November, 1973, and began functioning in February of 1974.

The Commissioners are:

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Professor R.P. MacKinnon of the College of Law, University of Saskatchewan served as Consultant to the Commission on the Lieutenant Governor's Review Board in Saskatchewan.

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The Law Reform Commission Act.

6. The commission shall take and keep under review all the law of the province, including statute law, common law and judicial decisions, with a view to its systematic development and reform, including the codification, elimination of anomalies, repeal of obsolete and unnecessary enactments, reduction in the number of separate enactments and generally the simplification and modernization of the law.

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N o t e
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These proposals have been prepared by the research staff of the Commission and have been tentatively adopted by the Commissioners. It is the policy of the Commission to seek public response to its proposals before a final report is prepared for presentation to the Minister of Justice. Accordingly, the Commission welcomes comments and criticisms.

Submissions should be directed to:

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INTRODUCTION

In its 1976 Report, Mental Disorder in the Criminal Process,[1] the Law Reform Commission of Canada recommended that the "Lieutenant Governor's Warrant" be abolished. The decision about what to do with an accused person who is found unfit to stand trial or not guilty on account of insanity, or one who is a mentally ill offender detained under the authority of the warrant, "should be made openly, according to known criteria, be reviewable and of determinate length."[2] The Commission concluded that the warrant "offends on all counts."[3] Although the Commission's recommendation has not been acted upon, its critique must be taken seriously in an appraisal of the warrant and the authority exercised pursuant to it.

The warrant is authority for detention "at the pleasure of the lieutenant governor" of persons found unfit to stand trial, not guilty of an indictable offence by reason of insanity, or mentally ill prisoners who have been transferred from prison

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1 Mental Disorder in the Criminal Process. Report of the Law Reform Commission of Canada. Ottawa, 1976.

2 Ibid., p. 38.

3 Ibid., p. 38.

under section 546 of the Criminal Code.[4] It is indeterminate detention which is authorized. Though it has always been possible that "the pleasure" of the Lieutenant Governor might change, it was not until 1969 that Parliament enacted a review procedure by which change could be effected.[5] The Criminal Code enables[6] the Lieutenant Governor of the provinces to appoint boards to review the cases of all persons detained under the warrant. Had the Federal Law Reform Commission's proposal to abolish the warrant been accepted, the review boards would no longer have been necessary. However, it was perhaps in anticipation that this recommendation might not be accepted, that the Commission made the more modest proposal for "study and rationalization" of the boards in operation.[7]

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4 Criminal Code, ss. 542, 543, 545, 546.

5 S.C. 1968-69, c. 38, s. 48.

6 Section 547(1) of the Code provides that the Lieutenant Governor of a province **may** appoint a board of review.

7 Report, footnote 1, p. 38.

A compelling example of the weaknesses to which the present review process is subject is the case of Emerson Bonner.[8] Though the injustice in this case originated in the summary disposition of an issue of fitness to stand trial, it was perpetuated by an inadequate review process. It was in response to the concern raised by the Bonner case, as well as to the Federal Law Reform Commission's proposal for a study of the boards in each province, that the Law Reform Commission of Saskatchewan undertook a study

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8 Emerson Bonner was found unfit to stand trial upon a charge of robbery with violence in New Brunswick in 1964. A transcript of the proceeding in which he was found unfit reveals that Mr. Bonner was not represented by counsel; that the Crown was not represented by counsel; that there was evidence of only one physician who may or may not have examined Mr. Bonner - it was not clear from the transcript; and that the fitness test was not addressed by the doctor or by the court. The full proceeding is recorded in four pages of transcript.

The robbery with violence charge was based on an allegation that Mr. Bonner was involved in a purse-snatching incident in which the victim was pushed down or fell. Although a conviction of the then nineteen-year-old defendant would have entailed, at most, a brief jail sentence, he spent the next sixteen years in custody and might still be in custody today had his case not attracted attention on the C.B.C. television program Ombudsman and through the efforts of the Canadian Association for the Mentally Retarded.

There have been some improvements in the law governing the determination of the fitness issue since the Bonner case. However, Mr. Bonner's lengthy incarceration until 1980, is attributable, as well, to inadequate review of his case by the New Brunswick Advisory Review Board.

See Harvey Savage, "The Relevance of the Fitness to Stand Trial Provisions to Persons with Mental Handicap" (1981), 59 Canadian Bar Review 319 at pp. 325-331.

of the review board in this province. The scope of our study and the recommendations to which it has led are themselves modest, for the operation of the review process must be assessed in the context of which it is a part - the disposition of unfit defendants and mentally disordered offenders - a context in which federal legislative authority is of primary importance. Nevertheless, useful changes can be made at the provincial level, and it is to this end that this paper is directed.

ADVISORY REVIEW BOARDS ESTABLISHED UNDER CRIMINAL CODE AUTHORITY

A board which is appointed pursuant to section 547 of the Code is an advisory board. It is required to conduct periodic review of persons detained under the warrant and "report" to the Lieutenant Governor setting out the results of the review and stating its opinion whether, as the case may be, a person who was found unfit to stand trial has recovered and is fit; a person who was found not guilty by reason of insanity has recovered, and if he should be absolutely or conditionally discharged; or a person who has been transferred from prison on acccount of mental illness has recovered.

The nature of the boards as advisory bodies is a consequence of the determination that a person who is subject to the warrant is detained "until the pleasure of the Lieutenant Governor of the province is known." Their Honours' pleasure is usually expressed by their councils, the provincial cabinets.[9] In practice, at any particular time, board recommendations in some provinces are always followed, while those in other provinces frequently are not accepted. The practice depends upon the confidence which a particular board enjoys with cabinet, and upon whether the cabinet is influenced by considerations other than those addressed by the board. However, we can be certain that, in reviewing warrant cases, the "safest" course often is seen as continued detention of one who is thought or feared to be dangerous. And those who follow this course can never be proved to have been wrong. Who could ever know how a prisoner would have behaved had he been free? On the other hand, release is usually seen as attended by some risk of adverse consequences which may result from releasing someone who subsequently is involved in criminal activity.

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[9] However, it is not in all provinces that the recommendation is considered by the cabinet. In Alberta, for example, the board's recommendation is forwarded to the Attorney General's Department and is considered by an official of that Department before it is presented directly to the Lieutenant Governor for his signature.

The fact that the boards are advisory bodies only may affect how they are required by law to conduct their business.[10] However, apart from what the requirements of natural justice or a duty to act fairly in this context may be, the Criminal Code itself is silent on the nature of the review process. The practice in different provinces has been for the boards to conduct their

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[10] In Re Nicholson and Haldimand - Norfolk Regional Board of Commissioners of Police (1979), 88 D.L.R. (3d) 671 (S.C.C.), a majority of the Supreme Court accepted, as a common law principle, "that in the sphere of the so-called quasi-judicial the rules of natural justice run, and that in the administrative or executive field there is a general duty of fairness." (See also Bates v. Lord Hailsham of St. Marylebone [1972] 1 W.L.R. 1373 at p. 1378 (per Megarry J.).

It is, of course, well known that "the classification of statutory functions as judicial, quasi-judicial or administrative is often very difficult, to say the least", and that the meanings of "natural justice" and a duty to "act fairly" are imprecise. (See Chief Justice Laskin's judgment in Re Nicholson at pp. 680, 681).

Two provincial courts of appeal have held that a duty is imposed on the Lieutenant-Governors' Advisory review boards to "act fairly." See Re Abel and Advisory Review Board (1981), 56 C.C.C. (2d) 153 (Ont. C.A.), and Re McCann and The Queen (1982), 67 C.C.C. (2d) 180 (B.C.C.A.).

business with different degrees of attention to what are thought to be the important elements of fair hearings.

These problems - the political level at which decisions to continue detaining or to release those subject to the warrant are made, and the lack of direction of the review process itself - are aggravated by the nature of the questions which must be addressed in this way. Whether or not once "unfit" defendants are "fit" to stand their trial; and persons previously found insane or inmates transferred from prison under the warrant have recovered are as difficult as any issues that arise in the criminal justice and mental health processes.

ADVISORY REVIEW BOARDS ESTABLISHED UNDER PROVINCIAL LEGISLATION

The Criminal Code authorizes the appointment of boards of review; it does not require that they be established. Some provinces have not appointed boards at all and others have appointed them under the authority of provincial mental health legislation. Ontario is one province where a review board is set up under provincial legislation. The enacting provision, section 34 of

the province's Mental Health Act,[11] is more specific than is the Code on the nature of the review contemplated.[12] However, the similarities between the board in Ontario and those in other provinces are more important than the differences. Neither that province nor the federal government has seen fit to prescribe procedures by which review is to be carried out.

THE ADVISORY REVIEW BOARD IN SASKATCHEWAN

It was in 1969 that provision was made in the Criminal Code for the appointment of boards of review. Before 1969, persons detained under the warrant were held indefinitely without the benefit of on-going periodic reviews to determine if the warrant should be lifted. Saskatchewan was exceptional in that, in this province, a board of review had been in existence for many years. In July, 1946, the Attorney General reported to cabinet on the desirability of setting up a board to assist him in advising the Lieutenant Governor with respect to the continued detention or release of persons held in custody under the warrant. As a result, the cabinet passed Order-in-Council 1229/46 establishing

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11 R.S.O. 1980, c. 262.

12 Ibid., ss. 32 and 34.

a board of five members - the District Court Judge of the Battleford Judicial District; the superintendent and the clinical director of the mental hospital at Battleford; a representative of the Attorney General's Department, and the Commissioner of Mental Health Services for the province. With the Judge as chairman and the Commissioner as secretary, the board met at the call of the chair. Three members constituted a quorum and a recommendation that a person be released required unanimity among those present.

The establishment of this board was an important step in the recognition of the need for systematic review of warrant cases. However, common to this board and to its successor which is appointed under criminal code authority, is the lack of direction on the nature of the review process which is thought appropriate.

The board of review presently includes a Judge of the Court of Queen's Bench, who acts as chairman, the Associate Deputy Minister of Justice, the head of the department of psychiatry at the College of Medicine and University Hospital, and a member of the Psychiatric Services Branch of the Department of Health. There is one vacancy. In practice, it has been the first three

mentioned who have conducted the majority of reviews. The incumbent members have both impressive professional qualifications and long experience on the board.

However confident we may be about the reviews conducted by the present board, the nature of the review process should not depend - as it has in the past and still does - on the personal qualities of the members and their perceptions of the requirements of fair and effective review. The difficulty of assessing fitness, or recovery from legal insanity or other mental illness; the context in which recommendations are offered and decisions made, and the lack of any provision for appeal, all reveal the importance of the review board's deliberations. The persons immediately affected, their relatives and friends, and the general public, should be satisfied that the reviews are fair and thorough.

THE WARRANT PATIENTS: "SAFE CUSTODY"

In its review, the board must determine if persons found unfit to stand trial have recovered sufficiently to do so, and whether persons found legally insane have recovered. It might be assumed that those for whom recovery or improvement is possible are given

the opportunity to bring it about. This would be an inappropriate assumption. The Criminal Code directs only that warrant patients be detained in safe custody; it does not require that treatment be made available to them or that the board review the efficacy of a treatment program intended to prepare them for trial or for release. Of course treatment may be provided and a conscientious review board may concern itself with treatment questions. However it has happened that warrant patients have languished without treatment and their conditions have deteriorated with the lack of stimulation in an institutional environment. This is one of the fundamental objections to the existing process and an attempt must be made to address it.

PROPOSALS AND COMMENTARY

(1) Establishment of Board of Review under the proposed Lieutenant Governor's Review Board Act

The enactment of legislation is proposed to provide for the appointment of a board of review to advise the Lieutenant Governor in Council as to whether (a) persons in custody found unfit to stand trial on account of insanity have recovered sufficiently to stand trial; (b) persons in custody found not

guilty by reason of insanity have recovered sufficiently to be discharged, absolutely or conditionally, or (c) persons in custody who have been removed from prison pursuant to section 546 of the Criminal Code have recovered sufficiently to be returned to prison if liable to further custody, or to be discharged if not liable to further custody.

Comment

The Criminal Code stipulates that these persons shall be subject to the warrant of the Lieutenant Governor. The Law Reform Commission of Canada has recommended that the warrant be abolished. Whatever may be the merits of this recommendation, only Parliament can act on it; it is not within the authority of the provinces to alter the fact that release depends upon the Lieutenant Governor acting upon the recommendation of the review board. However, it is open to the provinces to provide for boards of review under provincial mental health legislation and, thereby, to establish procedural requirements for the review process.

This proposal would restore to the province the authority to prescribe the procedures by which review is to be carried out.

(2) Composition of Board

It is proposed that the advisory review board be composed of seven members including a Judge or retired Judge of the Court of Queen's Bench, who shall serve as chairman, and six other persons of whom two shall be qualified psychiatrists and at least two shall be members of the bar of the province.

It is also proposed that three members of the advisory review board, one of whom is a qualified psychiatrist and one a member of the bar of the province, shall constitute a quorum of the board.

It is further proposed that there be appointed a person to act as secretary to the board of review, whose duties shall include attendance at hearings of the board and maintenance of summaries of the proceedings and of the evidence. The secretary shall also perform such administrative tasks in relation to the board's functions as are from time to time designated by the chairman.

Comment

The advisory review board in Saskatchewan presently consists of five members. Although the Criminal Code requires that at least two members be psychiatrists and one member be from the bar,

there is no requirement that one member shall be a superior court judge. Currently a Judge of the Court of Queen's Bench sits on the board and serves as its chairman. This recommendation would establish current practice as law.

In proposing that the panel be increased from five to seven members, the Commission has in mind the realities that practising psychiatrists in the province are few in number, and, also, that the lawyer on the board is a member of the Department of Justice. Persons become subject to the Lieutenant Governor's warrant after they have been found unfit to stand trial or acquitted on account of insanity. The effective trial of these issues requires psychiatric evidence to be given in an adversarial context. It is possible that the psychiatrist who has been called as a witness to give this evidence may also sit on the review board, and it is the Commission's view that a psychiatrist who has been involved in the determination of a fitness issue or in the trial of a person found not guilty by reason of insanity should not thereafter preside as a member of the board which reviews the case.

It is also possible that a board member who is a lawyer will have been involved in the trial of these issues. This is particularly so if he or she is a member of the Department of Justice and has

served as Crown counsel in such a case. While there are considerable advantages in having a representative of the Department on the panel, it has happened that the prosecutor in a trial in which the issue was insanity subsequently sat, as a member of the board, to review the same case.

That justice should be done and be seen to be done is a basic tenet of our judicial system which implies that those who preside in review of the detention of persons subject to the warrant should not earlier have been participants in the proceeding which resulted in their detention. This principle is expressed in subsequent recommendations. The increase in the panel will facilitate adherence to this principle.

The suggested increase in the panel recognizes another reality of the review process in Saskatchewan. Persons detained subject to the warrant in this province are relatively few in number - usually between twenty and thirty at any one time. Long standing members of the board become familiar with the cases which they are required to review. This has obvious advantages; it also has not so obvious disadvantages. Review of the same cases by the same people every six months may result in less effective review.

This can be avoided by expansion of the panel which, together with the recommended quorum requirement, will facilitate rotation of members.

It is proposed that a board secretary be appointed, in part to assist the chairman in administrative matters relating to the board's functions, and, in particular, to maintain records of the board's deliberations. Effective, on-going review requires a record which will inform board members and, through them, the other participants in the process, of the progress or lack of progress being made toward the lifting of the warrant. Conditions which the board concludes are significant in their recommendations - the treatment program and the progress of the warrant patient - should be recorded as fully and as precisely as is possible. At present, the chairman keeps notes about the cases under review. This recommendation would relieve him of this duty and would assist in the maintenance of the permanent records which are necessary in the review process.

(3) Appointment of Alternate Members

It is proposed that there be provision for the appointment of alternate members.

Comment

Such appointments will be useful where a quorum cannot readily be constituted from the panel.

(4) Terms of Appointment

It is proposed that board members be appointed for a three year term in office and that they be eligible for reappointment.

Comment

For the same reasons that quorums should not always be comprised of the same board members, it is desirable that there be provision for some turnover in board membership.

The Commission contemplated proposing the appointment of members to a three year term with possible renewal for only two three year terms. However, persons qualified for service on the board in Saskatchewan are relatively few in number. As well, it is appropriate that persons who provide especially valuable service on the board and who wish to continue to serve, should be eligible for reappointment without limitation.

This proposal recognizes the desirability of some turnover in board membership without strictly limiting the length of time members can serve.

(5) Exclusion of Board Member from Quorum

It is proposed that a board member who has previously appeared as counsel for the prosecution or the defence, or who has testified as an expert witness called on behalf of either party, in a prosecution which results in the issuance of a warrant, should thereafter be disqualified from participating as a board member in review of that warrant.

Comment

This proposal follows from the foregoing discussion.

(6) Representation of Warrant Patients

The appointment of an Official Representative whose responsibilities would include the representatives of warrant patients is proposed.

Comment

In its Proposals for a Guardianship Act, Part I: Personal Guardianship, the Commission recommended that an Official Representative be appointed whose primary responsibility with respect to guardianship would be to investigate complaints against personal guardians. In its Tentative Proposals for a

Compulsory Mental Health Care Act, the Commission contemplates expansion of this official's responsibility to include representation of hospitalized mental patients. These proposals recognize the need for a representative or an advocate to advise patients of their rights, to conduct informal investigations, to participate in hearings and, where appropriate, to initiate complaints or review proceedings.

Persons detained in custody under the Lieutenant Governor's warrant could benefit from the services provided by the Official Representative, and it is proposed that his responsibilities be extended to include them.[13]

(7) Board of Review Procedures

It is proposed that the legislation stipulate certain procedural requirements to facilitate effective review. In particular, the Commission proposes that there be provision for the giving of notice to interested parties of the hearings of the review board; for attendance and representation at hearings; for access to medical records; and for the introduction of evidence.

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[13] It should be noted that this proposal and certain sections of the proposed act are predicated on the establishment of the office of an Official Representative in other legislation.

Comment

The Criminal Code is silent on the procedures by which the Lieutenant Governors' review boards are to discharge their duties. And there is uncertainty about the requirements of the rules of natural justice or a duty to act fairly in this context.[14] As the Code describes its function, the board is an advisory body only, one which offers recommendations to the executive. However, its deliberations and recommendations are fundamentally important to "the liberty of the subjects" - those detained under the warrants - and in some provinces of which Saskatchewan is one, it is the effective decision-making body. Any uncertainty about the procedural requirements to which the board must adhere is increased by the possible vulnerability of the warrant itself to an attack based on sections 7 and 9 of The

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[14] Supra footnote 10.

Charter of Rights and Freedoms.[15] Accordingly, the Commission has concluded that procedures by which the board is to conduct its hearings should be set out in legislation.

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15 Constitution Act, 1982
Schedule B Part 1

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

9. Everyone has the right not to be arbitrarily detained or imprisoned.

Most of the provisions on this subject are self-explanatory. However, the Commission wishes to comment further on one in particular. The Commission is proposing that, in hearings in review of a warrant, the review board shall hear the evidence of the medical officer in charge or the attending psychiatrist, or both, as to the treatment plan for the warrant patient and the progress or lack of progress which, it is felt, the patient is making toward the lifting of the warrant. This proposal addresses the Commission's belief that more than custodial care must be made available to warrant patients. The institutional goal should not be only safe custody, the consequence of which may be lack of improvement or even a deterioration in the patient's condition. The objective is the lifting of the warrant, and the review board with its specialized personnel and independence is in the best position to ensure that reasonable effort is directed to this end.

(8) Recommendations of the Board of Review

The Commission proposes that a recommendation of the board of review be recorded in writing, together with the reasons for the recommendation, and that copies thereof be provided to the warrant patient in respect of whom the recommendation is made, and to the Official Representative.

Comment

The advisory review boards established under criminal code authority are required to "report" to the Lieutenant Governor. There is no requirement that reasons be given. This recommendation proposes that reasons be given - not only to the Lieutenant Governor, but to the patient and to the Official Representative. The reasons for a decision or for a recommendation constitute an essential part of the record in an on-going review process. Not only is the board reminded of its appraisal, over a period of months or years, of a particular case, but the patient is informed of matters which have a bearing on the board's recommendations. This is particularly important when the recommendation is against the lifting of the warrant.

THE PROPOSED ACT: THE LIEUTENANT GOVERNOR'S ADVISORY REVIEW BOARD ACT

SHORT TITLE

Short title

1. This Act may be cited as The Lieutenant Governor's Advisory Review Board Act.

INTERPRETATION

Interpretation

2. In this Act:

"advisory review board"

(a) "advisory review board" means the Lieutenant Governor's Advisory Review Board;

"psychiatrist"

(b) "psychiatrist" means a duly qualified psychiatrist entitled to engage in the practice of medicine under the laws of the province;

"warrant"

(c) "warrant" means a warrant of the Lieutenant Governor made under the authority of the Criminal Code (Canada);

"warrant patient"

(d) "warrant patient" means a person who is in custody in a place in the province under a warrant.

ADVISORY REVIEW BOARD

Board may be appointed

3. The Lieutenant Governor in Council may appoint an advisory review board to review the case of every warrant patient.

Composition of board

4.-(1) The advisory review board shall be composed of a judge of the Court of Queen's Bench or a retired judge thereof, who shall serve as chairman, and six other persons of whom two are duly qualified psychiatrists and two are members of the bar of the province.

(2) Three members of the advisory review board, one of whom is a psychiatrist and one of whom is a member of the bar of the province, constitute a quorum, and a recommendation of a majority is the recommendation of the advisory review board.

(3) The Lieutenant Governor in Council may appoint alternate members to the advisory review board; and where for any reason a member cannot act, an alternate member who satisfies the requirement in subsection (2) shall act in his stead.

Term of office

5. A member of the advisory review board shall hold office for a term of three years, and is eligible for reappointment at the expiration of his term of office.

Disqualification of board members

6. A member of the advisory review board who, in a proceeding that results in the issuance of a warrant, has appeared as:

(a) counsel for the prosecution or for the defence; or

(b) an expert witness;

shall not act as a member of the advisory review board in reviewing the case of that warrant patient.

Secretary to board may be appointed

7. The Lieutenant Governor in Council may appoint a person to serve as secretary to the advisory review board who shall attend all meetings of the board and maintain complete and accurate records of its deliberations.

REVIEW OF CASES

Board shall review warrants

8. The advisory review board shall review the case of every warrant patient:

(a) not later than six months after the issuance of the warrant;

(b) at least once in every twelve month period following the review required by clause (a) so long as the warrant patient remains in custody under the warrant; and

(c) at any time upon the written request of the Lieutenant Governor or the Minister of Justice.

Procedure

9.-(1) In conducting a review under section 8, the advisory review board shall hold a hearing for the purpose of receiving oral testimony and representations by or on behalf of the warrant patient.

(2) The chairman of the advisory review board shall give notice of the hearing to:

(a) the warrant patient;

(b) the medical officer in charge of the facility in which the warrant patient is in custody;

(c) the official representative; and

(d) any other person who in the opinion of the chairman has a sufficient interest in the proceedings.

(3) The warrant patient may attend the hearing unless directed otherwise by the advisory review board, and may have a person appear as his representative whether or not the warrant patient is present.

(4) Members of the public shall be excluded from the hearing unless the advisory review board and the warrant patient or his representative agree to the presence of members of the public or of a specified member or class of members of the public.

(5) The warrant patient or his representative may call witnesses and make submissions, and may cross-examine witnesses.

(6) The advisory review board shall hear evidence of the medical officer in charge of the facility at which the warrant patient is in custody, or of the attending physician, or of both, in relation to the treatment provided to the warrant patient and the progress or lack of progress that the warrant patient is making.

(7) The members of the advisory review board shall have all of the powers conferred upon commissioners by The Public Inquiries Act.

Board shall make recommendation

10.-(1) Upon the conclusion of the hearing, the advisory review board shall in writing recommend to the Lieutenant Governor in Council either that the warrant be lifted or that it be continued in force, and shall provide written reasons for the recommendation.

(2) A copy of the recommendation together with the reasons therefore shall be given to the warrant patient and to the official representative.

OFFICIAL REPRESENTATIVE

Powers and duties of official representative

11.-(1) The official representative shall:

(a) keep under review the circumstances of all warrant patients;

(b) have access to the medical records of all warrant patients; and

(c) have access to all warrant patients.

(2) The official representative may advise any warrant patient of his rights under this Act, and may initiate proceedings on his behalf.

(3) The official representative shall include in his annual report to the Legislative Assembly:

(a) the number of warrant patients;

(b) the number of warrant patients in respect of whom the advisory review board has recommended that the warrants be lifted; and

(c) the number of warrant patients in respect of whom the warrants have been lifted.

GENERAL

Provisions of Criminal Code respecting review boards not applicable

12. The provisions of the Criminal Code (Canada) respecting the appointment of a review board by a lieutenant governor of a province to review the cases of warrant patients do not apply to the advisory review board.

POOR

QUALITY

ORIGINAL